

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
	:	CASE NO. 13-10111 TPA
MICHAEL P. DUBERG,	:	
DENISE L. DUBERG,	:	CHAPTER 13
Debtors	:	
-----	:	
MICHAEL P. DUBERG,	:	RELATED TO CLAIM NO. 6
DENISE L. DUBERG, and	:	
Movant	:	
vs.	:	
	:	
THE BANK OF NEW YORK MELLON,	:	
Respondent	:	

MOTION TO EXCUSE REQUIREMENT FOR LENDER
TO FILE NOTICE OF MORTGAGE PAYMENT CHANGE
AND FOR DEBTORS RESPONSE THERETO

COMES NOW the Debtors, by and through their counsel, and files this Motion to Excuse Requirement for Lender to File Notice of Mortgage Payment Change and for the Debtors Response Thereto, a statement of which is as follows:

1. Movants are the Debtors in the above captioned matter.
2. Attorney for the Movant is Stephen H. Hutzelman, Esquire, whose address is 305 West Sixth Street, Erie, Pennsylvania 16507.
3. Respondent is Bank of New York Mellon, a lending institution, whose address is 2380 Performance Drive, Richardson, TX 75082.
4. Counsel for the Respondent is Allison F. Wells, Esquire, Phelan Hallinan & Schmieg, LLP, 1617 JFK Boulevard, Suite 1400, One Penn Center Plaza, Philadelphia, PA 19103.
5. Bank of New York Mellon is the holder of a second mortgage represented by Claim No. 6 filed in the within matter.
6. The mortgage upon which the claim of the Respondent is based, calls for interest only payments. As a result, the monthly payment varies from month to month.
7. The Debtors' Chapter 13 Plan calls for payments to Bank of New York Mellon in the amount of \$160.00 per month, which exceeds the actual monthly payment under the terms of the original agreement.

8. Respondent has filed numerous, nearly one per month, Notices of Payment Change for this claim, each representing a small adjustment in the monthly payment amount.

9. Debtors are required to respond to each such Notice of Mortgage Payment Change and for the Trustee to make such adjustments as is necessary.

10. The Movants propose that the payment for such claim remain at \$160.00 per month pursuant to the Plan, and that so long as this payment amount is adequate to cover the monthly payment required by Bank of New York Mellon for said claim, that Bank of New York Mellon be excused from the need to file Notice of Mortgage Payment Change and Debtor excused from filing responses thereto. If payments exceed the \$160.00 per month payment currently set forth in the Plan, Bank of New York Mellon shall resume its filing of Notice of Mortgage Payment Change, and Debtor will resume responses thereto.

Wherefore, Movants propose that this Court enter an order that the payment for the claim of the Respondent shall remain at \$160.00 per month pursuant to the Plan, and that so long as this payment amount is adequate to cover the monthly payment required by Bank of New York Mellon for said claim, that Bank of New York Mellon be excused from the need to file Notice of Mortgage Payment Change and Debtor excused from filing responses thereto. If payments exceed the \$160.00 per month payment currently set forth in the Plan, Bank of New York Mellon shall resume its filing of Notice of Mortgage Payment Change, and Debtor will resume responses thereto.

Respectfully submitted,

SHAPIRA, HUTZELMAN, BERLIN,
ELY, SMITH & WALSH

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